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7  
8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2010- 613**

13 **MELISSA BARBARA ALLEN**  
14 **1882 Granada Drive**  
15 **Concord, CA 94519**

**ACCUSATION**

16 **Registered Nursing License No. 543489**  
17 **Nurse Practitioner Certificate No. 10100**  
18 **Nurse Practitioner Furnisher Certificate No.**  
19 **10100**

Respondent.

20 Complainant alleges:

21 **PARTIES**

22 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
23 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department  
24 of Consumer Affairs.

25 2. On or about May 14, 1998, the Board of Registered Nursing issued Registered  
26 Nursing License Number 543489 to Melissa Barbara Allen (Respondent). The Registered  
27 Nursing License was in full force and effect at all times relevant to the charges brought herein and  
28 will expire on January 31, 2012, unless renewed.

3. On or about August 11, 1998, the Board of Registered Nursing issued Nurse  
Practitioner Certificate Number 10100 to Respondent. The Nurse Practitioner Certificate was in

1 full force and effect at all times relevant to the charges brought herein and will expire on January  
2 31, 2012, unless renewed.

3 4. On or about February 24, 1999, the Board of Registered Nursing issued Nurse  
4 Practitioner Furnisher Certificate Number 10100 to Respondent. The Nurse Practitioner  
5 Furnisher Certificate was in full force and effect at all times relevant to the charges brought  
6 herein and will expire on January 31, 2012, unless renewed.

### 7 8 JURISDICTION

9 5. This Accusation is brought before the Board of Registered Nursing (Board),  
10 Department of Consumer Affairs, under the authority of the following laws. All section  
11 references are to the Business and Professions Code unless otherwise indicated.

12 6. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent  
13 part, that the Board may discipline any licensee, including a licensee holding a temporary or an  
14 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the  
15 Nursing Practice Act.

16 7. Section 2761 of the Code states:

17 "The board may take disciplinary action against a certified or licensed nurse or deny an  
18 application for a certificate or license for any of the following:

19 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

20 "(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing  
21 functions.

22 ..."

23 8. California Code of Regulations, title 16, section 1442, states:

24 "As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from  
25 the standard of care which, under similar circumstances, would have ordinarily been exercised by  
26 a competent registered nurse. Such an extreme departure means the repeated failure to provide  
27 nursing care as required or failure to provide care or to exercise ordinary precaution in a single  
28

1 situation which the nurse knew, or should have known, could have jeopardized the client's health  
2 or life."

3 9. California Code of Regulations, title 16, section 1443, states:

4 "As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the  
5 failure to exercise that degree of learning, skill, care and experience ordinarily possessed and  
6 exercised by a competent registered nurse as described in Section 1443.5."

7 10. Section 2764 of the Code provides, in pertinent part, that the expiration of a license  
8 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the  
9 licensee or to render a decision imposing discipline on the license.

10 11. Section 118, subdivision (b), of the Code provides that the expiration of a license  
11 shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period  
12 within which the license may be renewed, restored, reissued or reinstated.

13 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
14 administrative law judge to direct a licentiate found to have committed a violation or violations of  
15 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
16 enforcement of the case.

### 17 18 FACTUAL BACKGROUND

19 13. At all relevant times herein, Respondent was employed as a nurse practitioner at  
20 McClure Convalescent Hospital and Rehabilitation Center ("McClure") in Oakland, California.  
21 A.F.<sup>1</sup> was a bed-bound patient at McClure who had skin irritation around her PEG (percutaneous  
22 endoscopic gastrostomy) tube. Respondent knew A.F. was allergic to penicillin. On February 14,  
23 2006, Respondent diagnosed an infection in the area around the PEG tube and prophylactically  
24 prescribed the antibiotic Keflex<sup>2</sup>. The pharmacist noted A.F.'s allergy to penicillin and called  
25 McClure to confirm the order. Nursing staff notified Respondent of the pharmacist's concern.

26  
27 <sup>1</sup> The patient's initials are used herein for privacy reasons.

28 <sup>2</sup> Patients with allergies to penicillin are sometimes allergic to Keflex as well.

1 Respondent nevertheless confirmed the order for Keflex. On February 15, 2006, Respondent  
2 went into anaphylactic shock, and was rushed to the emergency room.

3 FIRST CAUSE FOR DISCIPLINE

4 (GROSS NEGLIGENCE)

5 14. Respondent is subject to disciplinary action under Code section 2761(a)(1) in that she  
6 was grossly negligent while on duty as a nurse practitioner at McClure Convalescent Hospital and  
7 Rehabilitation Center, in Oakland, California, as follows:

- 8 a. When she prescribed Keflex to a patient with a known allergy to penicillin,  
9 given that there is a known cross reactivity between penicillin allergies and Keflex allergies;  
10 b. When she prescribed Keflex to a patient with a known penicillin allergy for a  
11 condition that was not confirmed or life-threatening;  
12 c. When she persisted in prescribing Keflex to a patient with a penicillin allergy  
13 without direct communication with the supervising physician;  
14 d. When she failed to prescribe an alternate antibiotic to which the patient was not  
15 allergic.

16 SECOND CAUSE FOR DISCIPLINE

17 (INCOMPETENCE)

18 15. Respondent is subject to disciplinary action under Code section 2761(a)(1) in that she  
19 was incompetent while on duty as a nurse practitioner at McClure Convalescent Hospital and  
20 Rehabilitation Center, in Oakland, California, as follows:

- 21 a. When she prescribed Keflex to a patient with a known allergy to penicillin,  
22 given that there is a known cross reactivity between penicillin allergies and Keflex allergies;  
23 b. When she prescribed Keflex to a patient with a known penicillin allergy for a  
24 condition that was not confirmed or life-threatening;  
25 c. When she persisted in prescribing Keflex to a patient with a penicillin allergy  
26 without direct communication with the supervising physician;  
27 d. When she failed to prescribe an alternate antibiotic to which the patient was not  
28 allergic.

1 THIRD CAUSE FOR DISCIPLINE  
2 (UNPROFESSIONAL CONDUCT)

3 16. Respondent is subject to disciplinary action under Code section 2761(a) in that she  
4 acted unprofessionally while on duty as a nurse practitioner at McClure Convalescent Hospital  
5 and Rehabilitation Center, in Oakland, California, as follows:

- 6 a. When she prescribed Keflex to a patient with a known allergy to penicillin,  
7 given that there is a known cross reactivity between penicillin allergies and Keflex allergies;  
8 b. When she prescribed Keflex to a patient with a known penicillin allergy for a  
9 condition that was not confirmed or life-threatening;  
10 c. When she persisted in prescribing Keflex to a patient with a penicillin allergy  
11 without direct communication with the supervising physician;  
12 d. When she failed to prescribe an alternate antibiotic to which the patient was not  
13 allergic.

14  
15 PRAYER

16 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
17 and that following the hearing, the Board of Registered Nursing issue a decision:

- 18 1. Revoking or suspending Registered Nursing License Number 543489, issued to  
19 Melissa Barbara Allen;  
20 2. Revoking or suspending Nurse Practitioner Certificate Number 10100, issued to  
21 Melissa Barbara Allen;  
22 3. Revoking or suspending Nurse Practitioner Furnisher Certificate Number 10100,  
23 issued to Melissa Barbara Allen;  
24 4. Ordering Melissa Barbara Allen to pay the Board of Registered Nursing the  
25 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
26 Professions Code section 12533.

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5. Taking such other and further action as deemed necessary and proper.

DATED: 5/27/10

*Louise R. Bailey*  
LOUISE R. BAILEY, M.ED., RN  
Interim Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
*Complainant*

SF2010200593